

701—12.4(422) Nonpermit holders. Persons not regularly engaged in selling at retail and who do not have a permanent place of business but are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals and the like shall collect and remit tax on a nonpermit basis. In such cases, a nonpermit identification certificate will be issued by the department for record-keeping purposes and may be displayed in the same manner as a sales tax permit. If the department deems it necessary and advisable in order to secure the collection of tax, transient or itinerant sellers shall be required to post a bond or certificate of deposit. A cash bond or a surety bond issued by a solvent surety company authorized to do business in Iowa shall be acceptable, provided the bonding company is approved by the insurance commissioner as to solvency and responsibility. The amount and type of bond shall be determined according to the rules promulgated by the director.

The department shall determine the due date of returns and payment of tax for temporary permit holders, giving due consideration to the type of business and frequency of sales. Persons holding nonpermit identification certificates may be required to remit tax upon demand or at the end of the event.

Persons regularly engaged in selling tangible personal property which is exempt from tax, making nontaxable transactions, or engaged in performing a service which is not enumerated in Iowa Code section 422.43 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this rule.

This rule is intended to implement Iowa Code section 422.53.

701—12.5(422,423) Regular permit holders responsible for collection of tax. A regular permit holder may operate by selling merchandise by trucks, canvassers, or itinerant salespeople over fixed routes within the county in which the permanent place of business is located or other counties in this state. When this occurs, the regular permit holder is liable for reporting and paying tax on these sales. The person doing the selling for the regular permit holder shall be required to have a form, either in possession or in the vehicle, which authorizes that person to collect tax. This form is obtained from the department and shall contain the name, address, and permit number of the retailer according to the records of the department.

This rule is intended to implement Iowa Code sections 422.53 and 423.9.

701—12.6(422,423) Sale of business. A retailer selling the business shall file a return within the succeeding month thereafter and pay all tax due. Any unpaid tax shall be due prior to the transfer of title of any personal property to the purchaser and the tax becomes delinquent one month after the sale.

A retailer discontinuing business shall maintain the business's records for a period of five years from the date of discontinuing the business unless a release from this provision is given by the department. See 701—subrule 18.28(2) regarding possible sales and use tax consequences relating to the sale of a business.

This rule is intended to implement Iowa Code sections 422.51(2) and 422.52.

701—12.7(422) Bankruptcy, insolvency or assignment for benefit of creditors. In cases of bankruptcy, insolvency or assignment for the benefit of creditors by the taxpayer, the taxpayer shall immediately file a return with the tax being due.

This rule is intended to implement Iowa Code section 422.51(2).

701—12.8(422) Vending machines and other coin-operated devices. An operator who places machines on location shall file a return which includes gross receipts from all machines or devices operated by the retailer in Iowa during the period covered by the return. The mandatory beverage container deposit required under the provisions of Iowa Code chapter 455C shall not be considered part of the gross receipts.

This rule is intended to implement Iowa Code sections 422.42(16), 422.43, 422.51, and Iowa Code chapter 455C.

701—12.9(422) Claim for refund of tax. Refunds of tax shall be made only to those who have actually paid the tax. A person or persons may designate the retailer who collects the tax as an agent for purposes of receiving a refund of tax. A person or persons who claim a refund shall prepare the claim on the prescribed form furnished by the department.

A claim for refund shall be filed with the department, stating in detail the reasons and facts and, if necessary, supporting documents for which the claim for refund is based. See 1968 O.A.G. 879. If the claim for refund is denied, and the person wishes to protest the denial, the department will consider a protest to be timely if filed no later than 30 days following the date of denial. See rule 701—7.41(17A). For refunds denied on or after January 1, 1995, the department will consider a protest to be timely if filed no later than 60 days following the date of denial.

When a person is in a position of believing that the tax, penalty, or interest paid or to be paid will be found not to be due at some later date, then in order to prevent the statute of limitations from running out, a claim for refund or credit must be filed with the department within the statutory period provided for in Iowa Code section 422.73(1). The claim must be filed requesting that it be held in abeyance pending the outcome of any action which will have a direct effect on the tax, penalty or interest involved. Nonexclusive examples of such action would be: court decisions, departmental orders and rulings, and commerce commission decisions.

EXAMPLE: X, an Iowa sales tax permit holder, is audited by the department for the period July 1, 1972, to June 30, 1977. A \$10,000 tax, penalty and interest liability is assessed on materials the department determines are not used in processing. X does not agree with the department's position, but still pays the full liability even though X is aware of pending litigation involving the materials taxed in the audit.

Y is audited for the same period involving identical materials used to those taxed in the audit of X. However, Y, rather than paying the assessment, takes the department through litigation and wins. The final litigation is not completed until September 30, 1983.

X, on October 1, 1983, upon finding out about the decision of Y's case, files a claim for refund relating to its audit completed in June 1977. The claim will be totally denied as beyond the five-year statute of limitations. However, if X had filed a claim along with payment of its audit in June 1977, and requested that the claim be held in abeyance pending Y's litigation, then X would have received a full refund of their audit liability if the decision in Y's case was also applicable to X.

EXAMPLE: X, a utility company, filed a request for a rate increase with the commerce commission on June 30, 1967. The rate increase became effective January 1, 1968. However, a final decision of whether X was allowed this rate increase is not made until September 30, 1974. The rate increase was disallowed. X then had to refund to its customers all disallowed, but collected, rate increases plus sales tax. X files a claim for refund of the involved sales tax on December 30, 1974. Only the tax for the years 1970 to 1974 will be refunded. The tax for the years 1968 and 1969 will be denied as being beyond the five-year statute set forth in Iowa Code section 422.73(1). However, if X had filed a claim covering the rate increase any time before January 31, 1973, requesting it be held in abeyance pending the outcome of the commerce commission ruling, then X would have been allowed a full refund of all the sales tax that is refunded from the effective date of the rate increase, January 1, 1968, through September 30, 1974.

EXAMPLE: X is audited by the department for the period July 1, 1973, to June 30, 1978, and assessed July 31, 1978. X pays the assessment on December 31, 1978. No protest was filed and no claim for refund or credit was filed requesting it be held in abeyance. On January 31, 1980, X files a claim for refund relating to the entire audit. The claim is based on a recent court decision which makes the tax liability paid by X now refundable. However, only the tax paid from January 1, 1975, through June 30, 1978, will be allowed as this is the only portion within the five-year statute of limitations set forth in section Iowa Code 422.73(1). If the claim had been filed on or before December 31, 1979, then the entire audit period July 1, 1973, to June 30, 1978, could have been considered for refund as the claim would have been filed within one year of payment.

This rule is intended to implement Iowa Code section 422.73.

701—12.10(422,423) Penalty and interest computation. Renumbered as 701—10.20(422,423), IAB 1/23/91.

701—12.11(422,423) Request for waiver of penalty. Renumbered as 701—10.21(422,423), IAB 1/23/91.

701—12.12(422) Extension of time for filing. Upon a proper showing of the necessity for extending the due date, the director is authorized to grant an extension of time in which to file a return. The extension shall not be granted for a period longer than 30 days. The request for the extension must be received on or before the original due date of the return. It will be granted only if the person requesting the extension shall have paid by the twentieth day of the month following the close of such quarter, 90 percent of the estimated tax due.

This rule is intended to implement Iowa Code section 422.51.

701—12.13(422) Determination of filing status. Iowa Code sections 422.51(4) and 422.52 provide, based on the amount of tax collected, how often retailers file deposits or returns with the department (see rule 12.1(422)).

The department will determine if the retailer's current filing status is correct by reviewing the most recent four quarters of the retailer's filing history.

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Statutory Requirement</u>	<u>Test Criteria</u>
Semimonthly	\$4,000 in tax in a semimonthly period.	Tax remitted in 3 of most recent 4 quarters exceeds \$24,000.
Monthly	\$50 in tax in a month.	Tax remitted in 3 of most recent 4 quarters exceeds \$150.
Annual	\$120 or less in tax in prior year.	Retailer remits \$120 or less in tax, for last 4 quarters and requests annual filing.
Seasonal		Retailer remits tax for only one quarter during the previous calendar year and requests filing for one quarter only.
Quarterly	All other filers.	

When it is determined that a retailer's filing status is to be changed, the retailer will be notified and will be given 30 days to provide the department with a written request to prevent the change.

Retailers may request that they be allowed to file less frequently than the filing status selected by the department but exceptions will only be granted in two instances:

1. Incorrect historical data is used in the conversion. A business may meet the criteria based on information available to the computer, but upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.

2. Data available may have been distorted by the fact that it reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the excise tax division.

Exceptions will not be granted in instances where the retailer's request is based on a decline in business activity, reduction in employees or other potentially temporary business action which will affect current and future reporting.

Retailers will be notified in writing of approval or denial to their request for reduced filing periods.

Retailers may request that they be allowed to file more frequently than the filing status selected by the department. Approval will be granted based upon justification contained in the retailer's request.

This rule is intended to implement Iowa Code sections 421.14, 422.51 and 422.52.

701—12.14(422,423) Immediate successor liability for unpaid tax. A retailer ceasing to do business is obligated to prepare a final return and pay all tax due within the time required by law. If a retailer ceasing to do business fails to do this, any immediate successor to the retailer who purchases the business or stock of goods is obligated to withhold from the purchase price enough of the purchase price to pay the tax, interest, or penalty which the retailer owes. Any immediate successor who intentionally fails to withhold sufficient of the purchase price to pay the delinquent tax, interest, and penalty is personally liable for the payment of the tax. However, if the immediate successor's purchase of the business or stock of goods was made in good faith that the retailer owed no tax, interest, or penalty, then the department may waive the immediate successor's liability.

12.14(1) Immediate successors having a duty to withhold. Only an immediate successor who, pursuant to a contract of sale, pays a purchase price to a retailer in return for the transfer of a going business or a stock of goods is obligated to inquire if tax, penalty, or interest is due and to withhold a portion of the purchase price if necessary. Persons who fail some aspect of this test, e.g., because they take by operation of law rather than by contract or provide no consideration, are not obligated to investigate or withhold. Nonexclusive examples of persons not so obligated are the following:

- a. A person foreclosing on a valid security interest.
- b. A person retaking possession of premises under a valid lease.
- c. A spouse electing to take under a will.
- d. A person taking by gift.
- e. Any other person taking for what would legally be considered "for value" but without the payment of a recognizable "purchase price."

Included within the meaning of the phrase "immediate successor" is a corporation resulting from the action of a sole proprietor who incorporates a business in which the sole proprietor is the only or the controlling shareholder; or a sole proprietorship established from a corporation of which the sole proprietor was the exclusive, majority, or controlling stockholder.

12.14(2) More than one immediate successor. If a retailer sells a business or stock of goods to two or more persons the following rules apply:

a. *Sale of stock of goods to two or more persons.* If a retailer sells a substantial portion of the retail business's stock of goods to another person who will in turn offer those goods for sale in a retail business, that person is an "immediate successor" and personally liable for payment of tax to the extent of tax, interest, or penalty owed or the amount of the individual purchase price, whichever is the lesser.

EXAMPLE: A sells the stock of goods from a furniture business, in unequal portions, to B, C, and D. B pays a \$5,000 purchase price for a portion of the stock of goods, C pays \$20,000 for a portion of the stock of goods, and D pays a \$30,000 purchase price for the remainder of A's stock of goods. A, at the time of the transfers, owes the department of revenue and finance \$10,000 in sales tax, interest, and penalty. Neither B, C, nor D withholds any amount for payment of tax from the purchase price. B, C, and D individually and together are liable for payment of the tax. Each is personally liable up to the amount of the purchase price which each has paid or the amount of tax, interest, and penalty owing, whichever is the lesser. In this example, B is liable for \$5,000, the lesser amount of B's purchase price (\$5,000) and the amount of tax which A owes (\$10,000); C is liable for \$10,000, since purchase price and tax owed are equal; and D is liable for \$10,000, the lesser amount of tax owed (\$10,000) and D's purchase price (\$30,000). The department can proceed against any one, two, or all three of the immediate successors up to the amount of tax which each owes, as it chooses.

b. Purchase of differing places of business. If one person owns two or more places of business, each having a separate sales tax permit, each location having its own permit is a separate business and has a separate stock of goods for the purpose of determining successor liability. A person purchasing the business at one location or the stock of goods from one location would be personally liable only for the tax owed under the permit assigned to that location.

12.14(3) *“Sale of a retailer’s business” characterized.* Usually, the sale of only the machinery or equipment used in a business without the sale or leasing of the realty of the business is not a sale of the business itself. *People v. Gabriel*, 135 P.2d 378 (Cal. App. 1943). The transfer of a retailer’s machinery or equipment and business realty to a person who continues to use the machinery, equipment, and realty for the sale of any type of tangible personal property constitutes the selling of the retailer’s business, and the person to whom the business is sold is an “immediate successor” and liable for tax.

EXAMPLE: A is a furniture dealer. The furniture business falls on hard times. A sells the stock of goods (the furniture offered for sale) to B. A then sells the furniture store (business realty) to C. A also sells C the office equipment and all other tangible personal property used in the operation of the furniture store except for the stock of goods (furniture). C then uses the purchased store and the office equipment in the operation of a sporting goods store. B takes the furniture purchased from A to B’s furniture store where it is sold. A owed the department \$7,000 in sales tax. Both B and C are immediate successors to A and personally liable for the sales tax.

12.14(4) *“Good faith” characterized.* An immediate successor to a retailer has purchased the retailer’s business or stock of goods “in good faith” if the immediate successor demonstrates, by suitable evidence, that one of the following situations exists. The list of situations is exclusive:

a. The department has provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid; or

b. The immediate successor has taken “in good faith” a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid as of the date of purchase. Immediate successors should not rely upon oral statements from department personnel that no tax, interest, or penalty is unpaid. An immediate successor should request a written statement to this effect. For information regarding delinquent tax, interest, or penalty and tax liens write to: Collections Section Supervisor, Iowa Department of Revenue and Finance, P.O. Box 10471, Hoover State Office Building, Des Moines, Iowa 50306. A “certified statement” from a retailer is a statement the truth of which is attested to before a notary public or other officer authorized to take oaths. A certified statement has been taken from a retailer “in good faith” if the immediate successor, in the exercise of due diligence, had no reason to believe a retailer’s statement was false or no reason to question the truth of the retailer’s statement.

This rule is intended to implement Iowa Code section 421.28.

701—12.15(422,423) Officers and partners—personal liability for unpaid tax. If a retailer or purchaser fails to pay sales tax when due, any officer of a corporation or association, or any partner of a partnership, who has control of, supervision of, or the authority for remitting the sales tax payments and has a substantial legal or equitable interest in the ownership of the corporation or partnership is personally liable for payment of the tax, interest, and penalty if the failure to pay the tax is intentional. This personal liability is not applicable to sales tax due and unpaid on accounts receivable. The dissolution of a corporation, association, or partnership does not discharge a responsible person’s liability for failure to pay tax.

12.15(1) *Personal liability—how determined.* There are various criteria which can be used to determine which officers of a corporation have control of, supervision of, or the authority for remitting tax payments. Some criteria are:

- a. The duties of officers as outlined in the corporate bylaws,
- b. The duties which various officers have assumed in practice,
- c. Which officers are empowered to sign checks for the corporation,
- d. Which officers hire and fire employees, and
- e. Which officers control the financial affairs of the corporation. An officer in control of the financial affairs of a corporation may be characterized as one who has final control as to which of the corporation's bills should or should not be paid and when bills which had been selected for payment will be paid. "Final control" means a significant control over which bills should or should not be paid rather than exclusive control. The observations in this paragraph are applicable to partnerships as well as corporations.

12.15(2) *"Accounts receivable" described.* Officers and partners are not responsible for sales tax due and owing on accounts receivable. An "account receivable" is a contractual obligation owing upon an open account. An open account is one which is neither finally settled or finally closed, but is still running and "open" to future payments or the assumption of future additional liabilities. The ordinary consumer installment contract is not an "account receivable." The amount due has been finally settled and is not open to future adjustment. The usual consumer installment contract is a "note receivable" rather than an account receivable. An account receivable purchased by a factor or paid by a credit card company is, as of the date of purchase or payment, not an account receivable. An officer or partner will be liable for the value of the account receivable purchased or paid. Officers and partners have the burden of proving that tax is not due because it is a tax on an account receivable.

12.15(3) *Beginning date of personal liability.* Officers and partners are not personally liable for state sales tax due and unpaid prior to March 13, 1986. They are liable for state sales taxes which are both due and unpaid on and after that date. See department rule 701—107.12(422B) for an explanation of officer and partner liability for unpaid local option sales tax.

701—12.16(422) *Show sponsor liability.* Persons sponsoring flea markets or craft, antique, coin, stamp shows, or similar events are, under certain circumstances, liable for payment of sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Included within the meaning of the term "similar event" is any show at which guns or collectibles, e.g., depression glassware or comic books, are sold or traded. To avoid liability, sponsors of these events must obtain from retailers appearing at the events proof that a retailer possesses a valid Iowa sales tax permit or a statement from the retailer, taken in good faith, that the property or service which the retailer offers for sale is not subject to sales tax. "Good faith" may demand that the sponsor inquire into the nature of the property or service sold or why the retailer believes the property or services for sale to be exempt from tax. A sponsor who fails to take these measures assumes all of the liabilities of a retailer. This includes not only the obligation to pay tax, penalty, and interest, but also to keep the records required of a retailer and to file returns.

Excluded from the requirements of this rule and from sponsor liability are organizations which sponsor events fewer than three times a year and state, county, or district agricultural fairs.

This rule is intended to implement the requirements of Iowa Code section 422.52.

701—12.17(422) Purchaser liability for unpaid sales tax. For sales occurring on and after March 13, 1986, if a purchaser fails to pay sales tax to a retailer required to collect the tax, the tax is payable by the purchaser directly to the department. The general rule is that the department may proceed against either the retailer or the purchaser for the entire amount of tax which the purchaser is, initially, obligated to pay the retailer. However, see 701—subrule 15.3(2) for a situation in which the obligation to pay the tax is imposed upon the purchaser alone.

This rule is intended to implement Iowa Code section 422.52.

[Filed 12/12/74]

[Filed 11/5/76, Notice 9/22/76—published 12/1/76, effective 1/5/77]

[Filed 9/2/77, Notice 6/15/77—published 9/21/77, effective 10/26/77]

[Filed emergency 4/28/78—published 5/17/78, effective 4/28/78]

[Filed 4/28/78, Notice 3/22/78—published 5/17/78, effective 7/1/78]

[Filed 1/5/79, Notice 11/29/78—published 1/24/79, effective 2/28/79]

[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]

[Filed 3/15/79, Notice 2/7/79—published 4/4/79, effective 5/9/79]

[Filed 1/18/80, Notice 12/12/79—published 2/6/80, effective 3/12/80]

[Filed emergency 7/17/80—published 8/6/80, effective 7/17/80]

[Filed 12/5/80, Notice 10/29/80—published 12/24/80, effective 1/28/81]

[Filed 9/11/81, Notice 8/5/81—published 9/30/81, effective 11/4/81]

[Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]

[Filed 3/25/82, Notice 2/17/82—published 4/14/82, effective 5/19/82]

[Filed 7/16/82, Notice 6/9/82—published 8/4/82, effective 9/8/82]

[Filed 8/13/82, Notice 7/7/82—published 9/1/82, effective 10/6/82]

[Filed 11/19/82, Notice 10/13/82—published 12/8/82, effective 1/12/83]

[Filed emergency 12/17/82—published 1/5/83, effective 1/1/83]

[Filed emergency 2/10/83—published 3/2/83, effective 3/1/83]

[Filed 2/10/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]

[Filed 9/9/83, Notice 8/3/83—published 9/28/83, effective 11/2/83]

[Filed 10/19/84, Notice 9/12/84—published 11/7/84, effective 12/12/84]

[Filed 1/10/86, Notice 12/4/85—published 1/29/86, effective 3/5/86]

[Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]

[Filed 10/3/86, Notice 8/13/86—published 10/22/86, effective 11/26/86]

[Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]

[Filed 1/23/87, Notice 12/17/86—published 2/11/87, effective 3/18/87]

[Filed 4/13/88, Notice 3/9/88—published 5/4/88, effective 6/8/88]

[Filed 11/23/88, Notice 9/21/88—published 12/14/88, effective 1/18/89]

[Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]◊

[Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

[Filed 5/23/91, Notice 4/17/91—published 6/12/91, effective 7/17/91]

[Filed emergency 7/1/92—published 7/22/92, effective 7/1/92]

[Filed 8/28/92, Notice 7/22/92—published 9/16/92, effective 10/21/92]

[Filed 9/24/93, Notice 8/18/93—published 10/13/93, effective 11/17/93]

[Filed 9/23/94, Notice 8/17/94—published 10/12/94, effective 11/16/94]

[Filed 11/14/97, Notice 10/8/97—published 12/3/97, effective 1/7/98]

[Filed 3/19/99, Notice 2/10/99—published 4/7/99, effective 5/12/99]

[Filed 9/17/99, Notice 8/11/99—published 10/6/99, effective 11/10/99]